

**IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL**

**Appeal from Order No. 629 of 2001
(FAFO No. 9 of 1992)**

U.P. State Road Transport Corporation
Through the Regional Manger
Dehradun. Appellant.

Versus

1. Smt. Jyotsna Adhikari
Widow of Sri Sadhan Adhikari
2. Master Surjit Adhikari
3. Master Sandeep Adhikari
4. Kumari Rimpa Adhikari
Nos. 2 to 4 minor children of
Shri Sadhan Adhikari under guardianship of
Their mother and natural guardian
Smt. Jyotsna Adhikari
All R/o Kirki Bagan Lane (Mather Para)
P.O. Ramaghat,
District Nadia (W.B.) Claimants/Respondents
5. Shri Mansa Ram Naiwal
S/o Sri Biseshwar Datt Naiwal
Driver through the Regional Manager
U.P. State Road Transport Corporation
Gandhi Road, Dehradun.
6. Sri Ranjit Singh
S/o Sri Fakir Chand, driver through
Regional Manager, U.P. State Transport Corporation
Gandhi Road, Dehradun.....Proforma Respondents
7. Mrs. Promila
W/o Mukund Lal Adhikari
R/o Kirki Bagan lane (Mather Para)
P.O. Ramaghat, Distt. Nadia (W.B.)...Respondent

Shri A.N. Sharma, learned counsel for the appellant.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 173 of Motor Vehicles Act, 1988, is directed against the judgment and award dated 20.09.1991, passed in Motor Accident Claims Tribunal/Additional District Judge, Dehradun in Motor Accident Claim Case No. 40 of 1991, whereby

compensation to the tune of Rs. 1,30,440/- was awarded to the claimants (respondents).

2. Brief facts of the case are that on 10.10.1990 at about 2:15 P.M., claimants, along with Shri Sadhan Adhikari (deceased), were travelling in bus registration No. U.G.A. No. 9338, owned by the appellant. It is alleged in the claim petition that the bus was being driven rashly and negligently by its driver. On its way from Dehradun to Mussoorie, the bus fell in a deep gorge and Shri Sadhan Adhikari (deceased), died in the accident. Claimants are his dependants. It is further alleged in the claim petition that he was earning Rs. 3,500/- per month at the time of his death. Respondent-Smt. Jyotsna is the widow of the deceased and rest three are his children. At the time of his death, he was aged 32 years. With these allegations, the claim petition was filed for the compensation of Rs. 6,90,000, against the U.P. State Road Transport Corporation (appellant).

3. Respondent corporation contested the claim petition and filed its written statement, denying rash and negligent driving on the part of its driver. However, the accident is not denied by the respondent nor the death of Shri Sadhan Adhikari is disputed.

4. Trial court, framed the following issues during the trial:-

1. *Whether the accident took place due the rash and negligent driving on the part of the driver of bus registration No. U.G.A. 9338, as alleged by the claimants? If so, to what extent and from*

whom the claimants are entitled to get compensation?

2. *Whether the accident took place due to the reasons beyond the control of the contesting respondents?*
3. *To what relief, if any, the claimants are entitled?*

5. I heard learned counsel for the appellant perused the record.

6. The accident and death of Shri Sadhan Adhikari is an admitted fact between the parties. It is also not disputed that the claimants are the dependants of the deceased. The evidence of eye-witness as to negligence on the part of driver is trustworthy. Perusal of the record shows that the deceased was aged 32 years, at the time of his death. The evidence on record further establishes a fact that the deceased was a teacher in School and his monthly emoluments was Rs. 1,683/- . Learned tribunal has rightly deducted $\frac{1}{3}$ rd of his salary, which the deceased would have spent on himself. As such, this Court is in agreement with the tribunal that loss of dependency to the claimants was Rs. 1, 122/- per month. Considering the age of 32 years of the deceased, at the time of the accident, a multiplier of 14, cannot be said to be excessive. Rs. 1,120 (taken as a round figure), makes annual loss of Rs. 13,440/-. If multiplied by multiplier of 14, the loss on account of dependency comes out to Rs. 1,88,160/-. The tribunal has deducted further 33% of the amount, as the amount was directed to be paid to the claimants in lump sum. As such, net dependency

loss directed to be paid by the tribunal is 1,25,440/- and after adding consortium of Rs. 5,000/- a sum of Rs. 1,30,440/- has been awarded, which in no case can be said to be an unreasonable amount. However, interest at the rate of 15% is a kind of penalty rate, which cannot be said to be just and proper.

7. In the opinion of this Court, 9% interest per annum would have met the ends of justice. Except for the rate of interest, I do not find any error of fact or that of law in the impugned award passed by Motor Accident Claims Tribunal. Accordingly, the appeal is liable to be dismissed, subject to modification, as to the rate of interest. The appeal is dismissed as to the amount of compensation to the tune of Rs. 1,30,440/-. The interest thereon shall be payable at the rate of 9% per annum instead of 15% per annum. It is also observed that if the amount has already been paid to the claimants, the same shall not be recovered from them. No order as to costs.

(Prafulla, C. Pant, J.)

Dt: 6th March, 2006
Sweta